

Duty of Damaged Person in Mitigation of Damages in Iranian, French and Common Law

Mehdi Rostamzadeh¹, Yousef Molaei², Abbas karimi-Pestakan³, Abdoallah Mahdavi⁴,

¹: Department of Economics, Salmas Branch, Islamic Azad University, Salmas, Iran.

²: Department of Law, Urmia branch, Islamic Azad University, Urmia, Iran.

³: PhD. student of Molecular Medicine, Cellular and Molecular Research Center, Tehran University of Medical Sciences, Tehran, Iran

⁴: PhD. Student of Health Information Management, School of Health Management & Information Sciences, Tehran University of Medical Sciences, Tehran, Iran

ABSTRACT

In accordance with the rule adopted in the law, any person damage another (physical or psychological damage), the damages must be compensated by injuring person. An important question that arises is that whether damaged after entering the damage only came to look at the damage and then claim compensation for damages or he or she get to do conventional actions to mitigate further damaging? According to the principle of Mitigation of Damage rule the damaged should go to the physician, to mitigate damage with doing of ordinary and reasonable actions.

KEY WORDS: Damaged, Mitigation of Damage, compensation of damages.

1. INTRODUCTION

The main purpose of this paper is to address the legal and moral principles of the injured person who has been damaged due to injuries, since damaged could be able to prevent worsening of the damage so it can provide mitigation of damage as well as the possibility of losing of proceedings against the accused. This debate is discussed in legal systems of Iranian, France and common law. Before the main issue to be addressed it is necessary for better adornment and exposition of discussion some introductory and preliminary topics be explained briefly. When any normal person is faced with any damage, he or she could display reasonable reactions to it and then could prevent developing of injury. If anyone in driving accident after having a personal injury, typically the injured person has responsibility for preventing further damage and must try to go to medical professionals to prevent escalation of damage, today's this task is called as rule of "mitigation of damage" (1). Based on this regulation, claimant could not just view damage but he or she must do all logical and common actions that are required to mitigate damage, so having no claim for damages that who could prevent them with the conventional sense and actions (2).

This rule originated and developed from the legal system of the common law and currently it has been accepted in most countries. The legal systems of some countries such as Iran and France have not explicitly mentioned this rule although it is in some regulations. This regulation in Iranian law clearly has not been accepted. However, it can be seen in other regulations that works as different terms. Article 15 of the Law of Approved Insurance in 1937 stipulates (3): "To prevent damage, as anyone which normally take care of own property, insured should do the insurance issue once accident approximate or occurring and he or she operate any requiring actions to prevent developing of damages otherwise insurer is not responsible". Also in accordance with article 355, if claimant could be able to prevent damages but not do it he or she could not demand for compensation for damages from who has lit the fire. Similarly, in Article 114 of the Iranian maritime law, this rule has been considered (4). In this paper the rule of mitigation of damages, just respect to duty of damaged, also who have physical and psychological injury will be discussed. Given that, this theory has further developed in West right so this investigation works as comparative study in legal system of Common Law, France and Iranian will be discussed. After this section, in section 2 Duty of damaged in mitigating of physical damages is investigated, in section 3 Psychological damages is reviewed and finally section 4 presents conclusion.

*Corresponding Author: Yousef Molaei, Department of Law, Urmia branch, Islamic Azad University, Urmia, Iran..
Email: y.molaei@gmail.com

2. Duty of damaged in mitigating of physical damages

2.1. Common Law

In common law legal system, based on mitigation of damages rule once physical damage occurred, damaged should do any conventional required actions to treat damage. For example damaged must follow any required treatment and take care him/herself by assistance of medical professional also do instruction and administration of physician carefully otherwise if damages can be prevented with conventional action cannot be claimed (5).

However, damaged could only do some required conventional and typical medical treatment and he or she cannot be forced to do beyond the normal treatment. For example, the likelihood of improving of injury resulting in mitigating of damages by difficult surgery be just 5 percent damaged cannot be obligated to perform this operation because it is such an unusual and unreasonable action. For instance, in the case where a 46 year old woman who worked at the reform school of delinquents due to severe obesity she had been affected to emotional illness. the physician had told him she should quit smoking and lose her weight, when she attempt to do this the Circuit Court of Canada stated that expecting of insurer from claimant to quit smoking and losing weight is unreasonable and unconventional expectation. But if he has the opportunity and ability to do this in this regard would be reasonable (6).

2.2. French law

In French law, mitigation of damage is not clarified explicitly. However some lawyers such as Dumat and Puthier believed that is required to damaged which perform standard and reasonable actions to prevent and mitigate damage (7). Some lawyers also in issue of fault announce that damaged must do conventional actions to mitigate damage or compensate damages (8).

But in opinion of some French jurists, silencing of French civil law about the rule of mitigation of damages is due to, during development of the French Civil Code, that rule was not yet in maturity level of the French Civil Law which be approved explicitly as an independent principle. In contrast, some authors disagree with accepting mitigation of damages rule in contracts law of France and declared that in this rule the right of damaged in relation to claimant requirement in commitment implement is in conflict.

However, among French courts accepting and enforcing in question rule is controversial. For example, in one case damaged due to car accident could not open their businesses for several months. Nevertheless, the Appealed Court of Montpellier's rejected request of damaged compensate for damages because of closing of business home for several month (9, 10).

Nevertheless, the Supreme Court of France in June 2003 rejected this in their judgment; in this case claimant because of car accident that has been affected him to mental disorders made proceedings in court toward compensate for damage. Appealed Bourges Court declared that since claimant for their improvement have not operated physician's recommendations has been committed a fault. Therefore, the court only ruled some compensation of damage (11, 12). Second branch of French Supreme Court after destruction of mentioned rule declared that damage importer, should compensate all entered injuries for damaged, and damaged have not any duty toward mitigating of damages in favor of damage importer(s). So no obligation and no commitment required for damaged to do medical actions (to mitigate damage) and no implementation of physicians recommendations cannot be considered fault (13).

2.3. Iranian law

In Iran Regulations and laws, mitigation of damage has not clarified as a general rule but in various regulations some parts of it can be seen. According to Article 114 of the Iranian maritime law: If the incumbent carrier to prove the death or physical injury caused because of fault or negligence of passenger and or action of passenger had an impact on occurring of it, according to each of them the court wholly or partly exonerate incumbent carriers from responsibility.

Also amendment of Article 355 of Islamic Penal Code state: "In all cases where the one who has lit fire is responsible of dead and injured persons which do not exist ways for escaping and rescuing of damaged persons otherwise one who has lit the fire will not be responsible" (14). Article 15 of the Insurance Act by 1937 stipulates (15): Insured to prevent damages, as everybody which normally take care from own property, make the insurance issue and in approaching event or occurrence must perform any required actions to prevent spreading and development of damage otherwise insurer will not be responsible. As it mentioned above, if claimant have possibility to prevent damages but not to do it he could not demand any right from who has lit the fire.

3. Psychological damages

3.1. Common Law

In common law legal system, implementation of discussed rule in psychological damages is one of the most controversial sections of this rule. Because, firstly compensate for psychological damages has a long period of time been disputed. Secondly, whether physical administration such as medical drugs to treat psychological and mental disorders is effective or not is controversial. Thirdly, although the effectiveness of medical drug in treating of mental and emotional damages is effective, but most emotional patients refuse treatment with medical drugs (5). Thus, even in common law legal system that is the origin of this rule courts rarely subjected emotional damage to the rule of mitigation of damages and don't declare it is required to patients to mitigate their own psychological damages. In the case of Skaria in New York, that was raped in his home declared due to the raping has been affected to psychological illness and has lost his sexual pleasure so could not perform her partnership with her spouse. After this event, claimant was following her treatment but when departed to another State did not continue her treatment then her psychiatrist had announced that without treatment her fears and emotional problems would be permanent. Finally, she did proceedings against the owner of her apartment and demanded compensate for damages because of his emotional problems. The court stated that it was reasonable expectations from claimant to continued her psychiatric care and emotional treating for six months and she was obliged to search and perform psychiatric advice. So lastly, the court limited compensate to emotional damages of psychological problem of claimant just for six months. Also The Alabama Supreme Court in case of Carnival Cruise Lines, Inc. v. Goodin in which carnivals and representatives had improperly declared to a disabled passenger in wheelchair that the ship tourism has a serviceable bathroom for disabled persons in wheelchair. But after the ship left the port it was found that the ship has not such facilities, so the court identified the task of mitigation of damages for emotional and psychological illness of affected person. Also California Supreme Court in the case of Pool V. Damaged City of Oakland recognized the assignment of mitigation of damages on emotionally and psychologically damaged person but reject implementation of it what damaged respect to which psychological and emotional damage can be mitigated no reason represent. Therefore, if one be subjected to damages from the fault of someone must do some conventional actions to mitigate damage. In the case of physical damage one should refer to specialist and perform her/his advises and in issue of financial losses must do necessary actions to prevent from occurring further damages. For example, in prosecution of Janice against of Appleton judge stated in 1985: Any claimants obligate to mitigate physical damage by surgery and other medical treatment. General rule in mitigation of damages in both contract and force responsibility be implementable in which claimant must do all conventional actions to mitigate damage and could not be able of proceedings to compensate for mitigated damage. In contracts if claimant do some level of conventional actions to mitigate damage and it reduced, damages also will be mitigated (6).

3.2. French law

The manager of a confectionery due to a car accident damaged and therefore could not continue his job and shop remained closed for long periods and during this time he lost his reputation and customers also machinery were depreciated. Appeals Court of Ammines rejected demand in compensation for damage caused by the closing of confectionery, loss of credibility of confectionery and depreciation of machinery then announced during this period (closure of confectionery) damaged should would choose a temporary manager instead herself. Also losing of job was not being due to as a direct result of the coincidence but it was straight consequence of no finding of alternative solution to manage confectionery (7). But Second Branch of Supreme Court of French after violation of discussed judgment, stated that importer of damage must compensate all damages resulting from accident and damaged not to do any task in favor of the offender (Importer of damage). As well as all damages entered to the business of damaged in which it was due to the inability (injury) of herself in managing confectionery, should not have been discontinued from causal chain between the event and damage (16).

3.3. Iranian Law

In Iranian law, certain provisions has not been stated about this rule but as mentioned the rule of mitigation of damages in Iranian rights has been accepted in spite of meaningful quietness of precedent. In this manner, it is said that the psychological damages have not special characteristics in which it was outside the scope of the rule of mitigation of damage. However, the main problem is that firstly, most of the psychological and emotional damaged patients fenced to prevent damages with conventional actions so to avoid development of psychological and emotional problems. Secondly, the person who damaged it was not expected from him to do some conventional and reasonable actions such as strive to mitigate damages.

4. Conclusion

Based on discussed rule, damaged must do required conventional and reasonable measures by referring to physician in order to prevent development of damage caused by destruction of commitment otherwise damaged cannot claim compensate for damages which could have been prevented with conventional actions from onset of them. Nevertheless, damaged entitled to claim any common costs for mitigating of damages. In common law legal system assignment of damaged in mitigating amount of damages has been explicitly accepted but in the field of psychological and emotional damages there is disagreement among the courts. In French law assignment of damaged to mitigate damage has not been explicitly accepted and disagreement about this rule is still in progress. In Iranian Law according to scattered regulations in this area, it seems to one obligate to do conventional actions to mitigate amount of damages.

REFERENCES

1. Bell J., S., Boyron, S., Whittaker, A., Bell, M., Freedland, and H., Stalford (1998): "Principles of French law", Oxford University Press.
2. Cafaggi, F., (2009): "Creditor's Fault: In Search of a Comparative Frame", *European Journal of Legal Studies*, 2(2):7-25.
3. Current Legal Developments (1996), *International & Comparative Law Quarterly*, 15(2):577-585.
4. Gluckstein, C.E., (2002): "The duty to mitigate: does the claimant have a duty to get better", *Insight Conference (Disability) and Federated Press Conference*, 5.
5. Klein, K., and G.N., Hininger (2004): "Mitigation of Psychological Damages: An Economic Analysis of the Avoidable Consequences Doctrine and Its Applicability to Emotional Distress Injuries", *Okla City, UL Review*, 29:405.
6. Le Pautremat S., (2006): "Mitigation of Damage: A French Perspective", *International & Comparative Law Quarterly*, 55(01), 205-218.
7. Mehr.org/Islamic_Penal_Code_of_Iran.pdf. [cited]; Available from.
8. Miceli T.J., C.F., Sirmansand G.K., Turnbull (2009): "Lease Defaults and The Efficient Mitigation Of Damages", *Journal of Regional Science*, 49(5), 915-930.
9. Minor, P., (1984): "Consumer Protection in French Law: General Principles and Recent Developments", *International & Comparative Law Quarterly*, 33(01), 108-133.
10. Peel, E., and G.H., Treitel (2007): "The law of contract", Sweet & Maxwell.
11. Plender, R., (1974): "The New French Nationality Law", *International & Comparative Law Quarterly*, 23(4), 709-747.
12. Sous Cass, N., (2003): "La victime n'est pas tenue de limiter son préjudice dans l'intérêt du responsable", 45.
13. Wayand, D., (1981): "A Comparative Study of the Law and Practice", *International & Comparative Law Quarterly*, 30(1), 165-189.
14. Available from: http://www.centinsur.ir/firmContents_en-IR.aspx?CategoryID=281. 2011 [updated 2011; cited]
15. Available from: http://www.centinsur.ir/firmContents_en-IR.aspx?CategoryID=277. 2011 [updated 2011; cited]
16. Available from: www.parstimes.com/law/Iran_law.html.